

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GENEVIEVE IDAR,)	CASE NO: 2:10-CV-217
)	
Plaintiff,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
COOPER TIRE & RUBBER CO.,)	Monday, February 28, 2011
)	
<u>Defendant.</u>)	(3:24 p.m. to 4:06 p.m.)

TELEPHONE CONFERENCE

BEFORE THE HONORABLE JANIS GRAHAM JACK,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Velma Gano; FTR
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APPEARANCES FOR:

Genevieve Idar: JOHN BLAISE GSANGER, ESQ.
The Edwards Law Firm
P.O. Box 480
Corpus Christi, Texas 78403

Cooper Tire & Rubber: DARRELL LEE BARGER, ESQ.
Hartline Dacus, et al.
800 N. Shoreline Blvd.
Suite 2000, North Tower
Corpus Christi, Texas 78401

RAPHAEL CHARLES TAYLOR, ESQ.
Johnson Trent, et al.
919 Milam St.
Suite 1700
Houston, Texas 77002

Intervenor Plaintiff,
Steven Allen Idar: WESLEY TODD BALL, ESQ.
Farrar Ball, LLP.
1010 Lamar
Suite 1600
Houston, Texas 77002

Corpus Christi, Texas; Monday, February 28, 2011; 3:24 p.m.

(Call to Order)

THE CLERK: Court calls Civil Action C-10-217, *Idar versus Cooper Tire and Rubber Company*. May I have appearances, please?

MR. GSANGER: John Gsanger appearing on behalf of the Idar Plaintiffs.

MR. BALL: Wesley Ball appearing on behalf of Mr. Idar.

MR. TAYLOR: Raph Taylor here on behalf of Cooper Tire and Rubber Company.

MR. BARGER: Your Honor, Darrell Barger on behalf of Cooper. I filed Notice of Additional Counsel late last Friday and Mr. Taylor and his firm and Mr. Trenton are still attorney of record as far as lead counsel.

THE COURT: All right, thank you. So should we go down -- there's some discovery dispute; is that -- disputes; is that right?

MR. GSANGER: That's correct, your Honor.

THE COURT: I'm sorry. You have to identify yourself when you speak.

MR. GSANGER: Oh, I'm sorry. This is John Gsanger. I apologize.

THE COURT: Where do you want to start, with the request for production?

1 **MR. GSANGER:** Yes, that would probably make the most
2 sense, I believe.

3 **THE COURT:** Okay, go ahead.

4 **MR. GSANGER:** Well, your Honor, at the original
5 pretrial conference we talked about the fact that we
6 anticipated that Cooper would be producing those documents
7 which we had in our possession and which our experts already
8 had in their possession from other cases. We mentioned the *Toe*
9 case, the case in Iowa, and we also mentioned the *Petersen* case
10 and in the *Petersen* case, you know, I have gone ahead and
11 further identified which specific documents we wanted by Bates
12 number and so our first request for production, you know, we
13 basically said, hey, can we have the documents that we had been
14 asking you to produce in pre-suit letters asking you to
15 preserve the evidence. Can we ask -- can we have you to
16 produce the documents we have referenced?

17 In the letters, we said, would you please disclose
18 these and then finally we sent a request for production because
19 we didn't get them through disclosure saying, okay, please
20 produce the *Toe* documents and the *Petersen* documents. If you
21 would rather not go through and, you know, produce the *Toe* and
22 *Petersen* documents, we have them laid out by category but if
23 you would just produce the *Toe* and *Petersen* documents, you
24 don't even have to mess with going through the categories.
25 Just give us the documents which we have and which our experts

1 already have in their possession but produce them, please, in
2 this case. That's the nature of the first request for
3 production.

4 **THE COURT:** Okay. And the response?

5 **MR. TAYLOR:** Raph Taylor, Cooper Tire. May I
6 respond?

7 **THE COURT:** Yes.

8 **MR. TAYLOR:** Thank you. When we were there for the
9 initial pretrial conference, Cooper had not yet been afforded
10 an opportunity to even examine the subject tire and so at that
11 point in time it was very difficult to ascertain just how far
12 attenuated the Plaintiff's request for the *Toe* documents and
13 the *Petersen* documents would really be from the subject tire
14 and in fact in this case the subject tire was built in February
15 of 2003 and we know where it was built in Tupelo, Mississippi
16 and we obviously know to what specific Green Tire Specification
17 and blueprint that it was manufactured to.

18 We have submitted to the Court an affidavit from Tony
19 Franklin differentiating very clearly the types of tires at --

20 **THE COURT:** I'm sorry. I don't --

21 **MR. TAYLOR:** -- issue here, the Idar tire --

22 **THE COURT:** -- I don't have an affidavit.

23 **MR. TAYLOR:** It was -- we filed it this morning with
24 a motion --

25 **THE COURT:** Well, that was struck.

1 **MR. TAYLOR:** -- related to the --

2 **THE COURT:** Yeah, that was struck. If you'd just
3 read the rules of the Court, you don't file discovery matters
4 with the Court.

5 **MR. TAYLOR:** Yes, ma'am. Well, in any case, the
6 argument is this -- is that obviously we have a very specific
7 tire that is involved in the accident involving the Idar
8 family. We know a lot about that tire and what the *Toe* and the
9 *Petersen* documents go to are years and years prior to this tire
10 and when -- and how this tire was made. In other words, those
11 documents would encompass formulas that weren't even in place
12 and being used when the Idar tire was being manufactured. They
13 deal with design, plant specifications and any number of
14 different components of the tires that have nothing to do with
15 the Idar tire itself.

16 In addition to that, Plaintiffs haven't met their
17 burden under the rules for trade secret document --
18 confidential, proprietary and trade secret documents. If we --

19 **THE COURT:** Are you calling these trade secret
20 documents? I thought you said they were completely outmoded.

21 **MR. TAYLOR:** Well, they're not completely outmoded
22 because what happens is, your Honor, is that, you know, we have
23 any number of more than 200 competitors around the world who
24 are at various stages of getting up and running as tire
25 companies and so what may look at -- into other manufacturers

1 who are up to speed like Cooper is has some sort of outdated or
2 outmoded procedure and, in fact, could be used to gain a
3 competitive advantage over Cooper if one of these other
4 entities, these other tire companies somewhere in some third-
5 world country is trying to get up and running has the benefit
6 of the research and the time and the effort and the money that
7 Cooper has expended on doing research to develop and design
8 certain tires and so they're not outdated and outmoded although
9 they are far attenuated from when and what is actually going on
10 in the Idar tire.

11 But Plaintiff hasn't presented the Court with
12 anything -- nothing, absolutely nothing with regard to why
13 those documents are relevant and necessary to a fair
14 adjudication of their claims and that's the burden they have to
15 reach in order to get to those documents and they have not done
16 that.

17 **THE COURT:** Which documents are you claiming are
18 trade secrets? Are they the same ones that have been already
19 presented in *Toe* and *Petersen*?

20 **MR. TAYLOR:** Yes, ma'am. They were presented under
21 protective orders, absolutely. They --

22 **THE COURT:** Well, you have a protective order here.

23 **MR. TAYLOR:** Yes, ma'am, I understand.

24 **THE COURT:** So you just present them under a
25 protective order.

1 **MR. TAYLOR:** And we've come to the Court several
2 times about the protective order and obviously I understand the
3 Court's position and I'm not asking the Court to rehash that
4 today but at the same time obviously you know Cooper's position
5 in that it believes that the protective order in place doesn't
6 give it the necessary protections that it should be afforded
7 for its property to be put out there in litigation.

8 **THE COURT:** Well, what documents are you -- exactly
9 are you claiming are trade secrets?

10 **MR. TAYLOR:** Well, there are a number of documents
11 and what we've done is we've included in a privilege log that
12 we've given to Mr. Gsanger the documents that we state, here
13 are the documents that we would affirmatively use. These are
14 the trade secret, confidential and proprietary documents that
15 we would affirmatively use that we're withholding and then in
16 terms of the request for production, what we have is we have a
17 number of objections that go further than that into the breadth
18 and depth of the discovery.

19 **THE COURT:** Well, those are overruled. I just want
20 to know what the -- what your trade secret documents are.

21 **MR. TAYLOR:** The trade -- there's a -- there is a
22 privilege log out there as to the ones that we would be
23 affirmatively offering under Rule 26.

24 **THE COURT:** Well, you need to identify those if
25 you're going to -- how long has it been since you've tendered

1 these requests for production, Plaintiff?

2 **MR. GSANGER:** Your Honor, we tendered these requests
3 for -- well, we asked for the documents in letters in August
4 and when we didn't get them through the informal -- the
5 disclosure process under Rule 26 as we had requested, then we
6 formally filed a request for production in mid-November and
7 one --

8 **THE COURT:** So here we are in February and you still
9 don't have them?

10 **MR. GSANGER:** We still don't have them. We -- and
11 we kept thinking -- we kept getting the impression from Cooper
12 that we were going to get these documents when the Court
13 entered the protective order and then when the Court did enter
14 the protective order, we got the idea we were going to get
15 these documents when the Court overruled the motion for
16 reconsideration and then when the Court did overrule the motion
17 for reconsideration, we thought we were going to get the
18 documents but we didn't and then we thought we'd get them when
19 the Court overruled the second motion for reconsideration and
20 that is why we have ultimately decided we just need to file a
21 motion to compel and that was why we wanted to set this
22 conference up to see if the motion to compel would become
23 necessary.

24 **THE COURT:** Well, I don't see anywhere in the
25 response Cooper's response where they've identified any trade

1 secret documents.

2 **MR. GSANGER:** Your Honor, the privilege log that they
3 provided has to do with the privilege log of documents that
4 they wished to offer to us. It's not a privilege log that has
5 any relationship to the documents that we requested. There's
6 no privilege log that makes any reference topside or bottom to
7 the documents that we requested and one thing I would note is
8 this. As you may recall, your Honor, that Document Number 8 in
9 this case was a motion to strike Plaintiff's pleadings and in
10 Footnote Number 2 to Document Number 8 -- this is a document
11 signed by Cooper's attorneys -- it says most of the documents
12 characterized in Paragraphs 90 through a hundred and sixty of
13 Plaintiff's original complaint appear to have been produced to
14 Plaintiff's counsel in one or more cases including the Iowa
15 State Court case of *Toe versus Cooper*.

16 Well, obviously then if they're saying that our
17 allegations, which are the ones that are set forth in
18 Paragraphs 90 through a hundred and sixty of our complaint,
19 appear to be documents that they produced in *Toe* and other
20 cases, well, then that's naturally why we feel like, well,
21 gosh, then obviously then you've admitted that those documents
22 produced in *Toe* and in *Petersen* are the ones that you're
23 directly responsible -- directly responsive to our Paragraphs 1
24 through -- I mean, 90 through 160 in our complaint.

25 **THE COURT:** In all the requests for production, is

1 this right, Mr. Taylor and Mr. Trent, the request for
2 production, the Bates stamps numbers are the documents directly
3 from *Toe* and *Petersen*?

4 **MR. TAYLOR:** Your Honor, what they did is they made a
5 general request for specific documents -- or excuse me -- a
6 general request for the *Toe* documents and then they've made a
7 specific request under *Petersen* for the *Petersen* documents by
8 Bates numbers listed on a certain exhibit.

9 **THE COURT:** Okay. And I didn't see -- I've got the
10 responses here. I didn't see any identification of a -- by
11 Bates stamp of any document that's claimed to be trade secrets.

12 **MR. TAYLOR:** Well, there is a general statement
13 leading into the responses, your Honor, that talks about trade
14 secret documents and the fact that these are -- Number 1 would
15 be the preliminary statement of --

16 **THE COURT:** Would you state your name, please?

17 **MR. TAYLOR:** -- objections and I believe --

18 **THE COURT:** State your name.

19 **MR. TAYLOR:** I beg your pardon?

20 **THE COURT:** Your name?

21 **MR. TAYLOR:** Oh, I'm Raph Taylor for Cooper Tire. I
22 apologize.

23 **THE COURT:** Okay, thank you.

24 **MR. TAYLOR:** Number 1, we talk about the fact that
25 there are concerns about the confidentiality and the privacy of

1 Cooper's property interests that are at stake here and then
2 again in both -- in Paragraph 6 also talks about that and then
3 Paragraph 7 also talks about the confidential proprietary
4 nature of the documents.

5 **THE COURT:** Well, you have to identify these by -- if
6 they're Bates number, you need to identify them. I mean,
7 that's -- you have already lost your opportunity. It's been 30
8 days for you to do that with some particularity.

9 **MR. TAYLOR:** Well, your Honor, these massive open-
10 ended requests that we've gotten from Plaintiffs especially
11 with regard to these *Toe* documents don't necessarily lend
12 themselves to responding in that way and --

13 **THE COURT:** Well, I don't know why not. If they've
14 been identified by Bates number, you ought to be able to say,
15 these are trade secrets, Bates Numbers 1000 through 1050 or
16 something like that. I don't know how difficult that is.

17 **MR. TAYLOR:** Well, and I -- sorry, your Honor, Raph
18 Taylor for Cooper Tire. Just turning, for instance, to Page 8,
19 there's a broad, open-ended request here, "Knowledge that
20 Cooper's tires would benefit from improved durability
21 with respect to the tires' susceptibility to tread
22 and belt separations." That's a broad, sweeping
23 request that is not specific to a Bates number out of the
24 *Petersen* case. It's not just, give me the *Toe* documents. Now
25 it's just generalized, hey, here's what we want. Here's a

1 category that doesn't really apply necessarily to the documents
2 and the type of work that Cooper does in terms of how it --

3 **THE COURT:** Well, you're basing all your objections
4 on your -- on the inappropriateness of a protective order and
5 I've already overruled that. So you need to give them the
6 documents.

7 **MR. TAYLOR:** Is that as to all the requests for
8 production, your Honor?

9 **THE COURT:** The ones I have in front of me are just
10 Request for Production Number 1 with subparts.

11 **MR. TAYLOR:** Right. Through Subpart, I believe, VV,
12 your Honor.

13 **THE COURT:** No, I've got -- yeah, VV, V as in Victor.
14 And then you have not answered interrogatories?

15 **MR. GSANGER:** Yes, your Honor. This is John Gsanger
16 on behalf of the Plaintiffs. The first interrogatory is more
17 or less inclusive of the Interrogatories Number 4 -- I mean,
18 Number 2 through 5. So we can skip that first interrogatory.
19 The second interrogatory -- the first interrogatory which I
20 seek to compel an answer to, which is Interrogatory Number, if
21 we've asked for the identification of employees or ex-employees
22 who worked at the Tupelo, Mississippi plant in the winter of
23 2003, that's the exact plant where our tire was made during the
24 exact part of the year -- during the year when our tire was
25 made.

1 I've asked for job descriptions and contact
2 information for the people who were involved in splicing
3 components for the tire, for building the tire, first stage and
4 second stage of tire-building and for doing any kind of
5 inspection and sorting and classification of the tires after
6 they are cured. That's to say basically once people start
7 putting the tire together on a tire-building drum, we want the
8 names of those employees who worked with those jobs at the
9 plant where the tire was made who worked during the season when
10 the tire at issue was made -- during the year when the tire at
11 issue was made. We want to have their contact information and
12 some of their job descriptions and we also want not just the
13 tire builders but also the tire inspectors, the persons who
14 look at and inspect the tire and classify the tire.

15 **THE COURT:** So the objection is that it's too
16 onerous? How onerous is it? Have you attempted to get this
17 information?

18 **MR. TAYLOR:** Yes, your Honor, Raph Taylor here for
19 Cooper Tire. A couple things that make it -- one, it is
20 onerous. Two, again --

21 **THE COURT:** How is it -- you can't just say it's
22 onerous. You've got to tell me that you've made inquiries and
23 this is what the result was. You just can't make these
24 allegations. So what are they? Why is it onerous?

25 **MR. TAYLOR:** Yes, your Honor. Because we have to go

1 back -- the way the question is raised, not only do we have to
2 go back and identify each and every individual who may have
3 been at the plant during that three-month period in 2003, which
4 is almost eight years ago, then we have to go through and
5 figure out exactly what their job description was and what that
6 job description may have entailed that might fit them within an
7 answer to this interrogatory -- whether or not they fit into an
8 answer --

9 **THE COURT:** Well, how much trouble is that? Have you
10 asked somebody?

11 **MR. TAYLOR:** Absolutely, your Honor. We have begun
12 working on that and I know that thus far it has taken somebody
13 at least 40 hours to try and put those names together that --
14 just to start from to then go to the personnel file and start
15 digging through the personnel file and that -- the other
16 overarching concern here, your Honor, is as Mr. Gsanger has
17 brought up since the beginning about the identities of his
18 Plaintiffs and their private information is, again, by
19 answering this interrogatory without the necessary protection,
20 we're exposing our current and former employees to all sorts of
21 privacy concerns having their names and addresses and phone
22 numbers out there in litigation without protection.

23 **THE COURT:** I have entered a protective order. So
24 that is not an appropriate reason to fail to respond to this
25 interrogatory. So, I mean, if all of your objections are in

1 the protective order I entered, they're not going to go very
2 far. Do you understand?

3 **MR. TAYLOR:** Yes, your Honor. And the -- it
4 obviously goes to the overbroad nature and the fact that
5 anybody --

6 **THE COURT:** Well, that's overruled but how many
7 employees did you have during that time period at Tupelo?

8 **MR. TAYLOR:** I mean, you know, your Honor, I'd have
9 to go back and find out exactly but let me --

10 **THE COURT:** Well, wouldn't you have -- I would have
11 thought -- I'm sorry. I would have thought that that would be
12 something you would have on hand since you're complaining that
13 it's so onerous.

14 **MR. TAYLOR:** Absolutely. And part of it is having
15 the class done, do we take all of the employees that were
16 employed at the plant at that time because technically they
17 could all fall in here and so each of their personal files will
18 have to be examined to determine whether or not their job
19 description or duties included, you know, the splicing,
20 building or inspecting of passenger or radial light truck tires
21 from any stage. Again, that could encompass, you know,
22 everyone in the plant because everyone in the plant has some
23 form of duty to be looking out at what's going on in the plant
24 and what's -- how the tires are being built and that sort of
25 thing.

1 So, again, it doesn't really narrow the scope by
2 saying, here are their job descriptions of just the people we
3 want. Now, if you want the job description -- if you want the
4 people who built the tire -- if we can identify the people who
5 were building tires during that three-month period, that's a
6 much less onerous task so that then he can figure out whether
7 or not he wants to go depose these people and, in fact, you
8 know, if there's a builder's tag in the tire -- which I don't
9 believe there is in this case -- it could actually identify
10 these specific individuals who built the tire.

11 **THE COURT:** I'm sorry. He can't do that without the
12 information of who they are and what their job was. So I'm not
13 understanding what the problem is with disclosing this
14 information.

15 **MR. TAYLOR:** Well, if -- your Honor, Raph Taylor for
16 Cooper Tire. It is -- it goes to the fact that if we -- when
17 you read the interrogatory at its face, what it says to me is,
18 you know, basically anybody who during a pre-cure or post-cure
19 stage had a duty to look at the tire, to inspect the tire to
20 see what was going on -- I mean, the way the terms are used in
21 that, it could be anybody from the guy at the mixing station to
22 the guy --

23 **THE COURT:** Well, but if you don't have a number, I
24 don't know why it would be -- why you can tell me that it's
25 onerous to get this information. You said it -- you've already

1 gotten the names.

2 **MR. TAYLOR:** Yes, ma'am. I just don't want to give
3 the Court a number that I am wrong about off the top of my
4 head. I apologize. I just don't have that at my fingertips
5 right here but I know -- I do know that it is quite a few and I
6 do know that there -- and --

7 **THE COURT:** Well, I don't know what "quite a few"
8 means.

9 **MR. TAYLOR:** Yes, ma'am. I would --

10 **THE COURT:** I don't have a clue. So you must provide
11 that information. That objection is overruled.

12 **MR. TAYLOR:** Okay.

13 **MR. GSANGER:** Your Honor, the -- this is John Gsanger
14 again on behalf of the Plaintiffs. Interrogatory Number 3 is a
15 very similar interrogatory that, again, asks for contact
16 information and certain job description information with
17 respect to Cooper's ex-employees and employees who worked at
18 Cooper's regional inspection points and what a regional
19 inspection point in Cooper lingo is the same thing as what an
20 adjustment center is referred to in Michelin or Continental
21 lingo. This regional inspection point is the area where a tire
22 that gets returned under breach of warranty where, you know,
23 you buy a tire from Discount Tire and it falls apart in a
24 manner that makes you believe that you have a claim to get a
25 new tire under the warranty -- when that tire gets brought back

1 to the dealership, the dealership then sends it on to Cooper
2 and Cooper sends it to a regional inspection point.

3 **THE COURT:** So you want the regional inspection point
4 for Tupelo, Mississippi?

5 **MR. GSANGER:** Well, it's -- see, it's not quite laid
6 out exactly that way because they have a couple of regional
7 inspection points across the nation and if there was -- if it
8 was laid out such that all Tupelo tires went to Regional
9 Inspection Point Number 1, I'd be -- I'd have no problem
10 limiting myself to Regional Inspection Point Number 1. I have
11 no -- I wouldn't have a problem with that but that is not, in
12 fact, how it works.

13 How it works is that Cooper tires, whether they're
14 made at the Tupelo plant or at, you know, the Texarkana plant,
15 they go to whichever regional inspection point is closest to
16 the area where the tire happened to have been returned. I
17 mean, like if you buy a tire up in -- if the tire happens to be
18 made in Mississippi but it's sold into the market up in
19 Massachusetts and yet it fails out in California, it winds up
20 going to the regional inspection point that's closest to the
21 California area where it's returned. It's not necessarily
22 broken down by plant of manufacture or even the area where the
23 tire went into the stream of commerce.

24 And so our request is not limited to any one given
25 regional inspection point although we'd be happy to if it could

1 be limited but it's not limited in that fashion because the
2 tire -- because that's not how the regional inspection points
3 are organized. So we just want the identification of the
4 employees with some job description information about Cooper's
5 regional inspection point personnel so that we can talk to them
6 -- identify them as witnesses and talk to them about how --
7 what is the actual methodology that Cooper actually employs
8 when determining whether or not a tire failed to cause a
9 material defect or a workmanship problem as opposed to whether
10 it failed in the course of use due to abuse because what we
11 find is that the standards that Cooper sometimes wants to --
12 want to employ in litigation are not the same standards that
13 they like to employ -- or that they do actually, in fact,
14 employ in the real world.

15 And so what we'd like to do is take the depositions
16 of people who do these kinds of analyses in the real world in
17 the business context. We'd like to have the information not
18 only to be able to show that, you know, whatever their hired
19 litigation experts say, if you do a real-world analysis on this
20 claim, the actual standards and practices that are employed in
21 the actual sale and warranty-return analysis of tires in
22 Cooper, well, then this tire is clearly a defective one. We'd
23 like that both for -- to get evidence in front of the jury and
24 as you can imagine, it's also very, very valuable in being able
25 to respond to the Daubert motions which inevitably get filed in

1 these cases.

2 **THE COURT:** And your response?

3 **MR. TAYLOR:** Yes, your Honor, Raph Taylor for Cooper
4 Tire. A couple things that I need to point out to the Court
5 about what these regional inspection points are and what they
6 are not because there is a little bit of a misconception going
7 on right now. These regional inspection points receive tires
8 from dealers across the nation by region and these regional
9 inspection point employees are not trained nor do they even
10 attempt to do a forensic analysis to determine why the tire
11 failed. Their sole job, your Honor, is to make a note of a
12 condition. They have a list of condition codes that are about
13 a hundred and eight items long and all they do is they look at
14 the failed tire. They note a condition code in the computer
15 and then the tire is sent on. They are not putting their hands
16 on it and putting it under extreme light and doing a full
17 forensic examination as a tire expert would.

18 The other thing that makes this request so -- to say,
19 oh, we need to know about it because we need to know what
20 they're doing and how they're doing it, the corporate
21 representatives have said and will continue to tell them in
22 testimony time and time again how these inspections are done,
23 how these condition codes are determined at these regional
24 inspection points.

25 The other thing that makes this request completely

1 irrelevant to this case is the Idar tire never went through one
2 of these regional inspection points. It failed while in
3 service. From what I understand of the chain of custody, it's
4 been in either an investigator or a Plaintiff attorney's hands
5 or one of their experts since that time and they have the chain
6 of custody for it. So there's no analysis that was done by a
7 Cooper employee at a regional inspection point with regards to
8 the Idar tire itself. It's completely irrelevant. The
9 testimony would simply be here's -- we look at these tires and
10 we do the coding. It's testimony that they can get from a
11 corporate representative. They don't -- they do not need the
12 names and identifications of these employees out there. It
13 makes no sense to this case.

14 **MR. BALL:** Your Honor, this is Wesley Ball for
15 Mr. Idar, if I could add one bit to that. I was counsel in the
16 Toe matter and we went over the regional inspection point
17 centers at very -- very in-depth length and one thing that
18 Mr. Taylor left out there is not only do these people record --
19 the regional inspection people record the condition of the tire
20 but we have found that in a number of instances, they will
21 change the condition that the dealer has originally recorded to
22 the condition that they believe -- the regional inspection
23 point people believe was the cause of the failure.

24 So for instance, your Honor, if the dealer coded the
25 tire as a tread separation, which that is normally a code of

1 Number 32, we have found through printout from these regional
2 inspection points on specific tires that 32 will actually be
3 changed by the regional inspection person to another cause of
4 the separation. For instance, maybe they might code it as
5 under-inflation or impact or something of that nature and in
6 doing that, your Honor, that reduces the number of tread
7 separations that Cooper recognizes and the number of tread
8 separations that Cooper would have to then thereafter report to
9 the Federal government under The Tread Act and you can follow
10 it on down the line, potentially resulting in Cooper not having
11 to recall tires or have an outlook on the numbers that is
12 different from the reality.

13 So it's what those regional inspection point people
14 who do that that's something that I believe it is necessary to
15 get into. We've done it in other cases and it does prove
16 exactly how Cooper is looking at their tires and sort of a
17 motivation behind what they're doing at this point.

18 **MR. TAYLOR:** May I briefly respond, your Honor, Raph
19 Taylor for Cooper Tire?

20 **THE COURT:** Yes, sir.

21 **MR. TAYLOR:** Just very briefly, it's important to
22 note on what Mr. Ball is talking about. The fact that the
23 dealer, when they actually code the tire as to what they think
24 they see in the tire, they have about eight codes to go from.
25 The regional inspection point employees have a hundred plus

1 codes to go from to actually make a decision as to what they're
2 seeing in the tire. He said something that is very telling and
3 incorrect in that he says that, well, they're determining the
4 cause of the separation. They are not determining the cause of
5 the separation. They are simply noting what the condition is
6 that they see in the tire.

7 **THE COURT:** Do you have people that are in charge of
8 each one of these centers and if so, how many centers are
9 there?

10 **MR. TAYLOR:** There are four centers in the United
11 States and, yes, there is one Cooper corporate employee that
12 would be in charge of those centers.

13 **THE COURT:** If it's just one employee that's in
14 charge from 2003 -- I'm talking about if they could depose one
15 person from 2003 to now, would there be a big turnover in the
16 people in charge?

17 **MR. TAYLOR:** Probably not, your Honor. I think there
18 might be one or two that they would have to depose if that were
19 the case from 2003 to present.

20 **THE COURT:** Well, why don't we just start with giving
21 them the information for the people who have been in charge of
22 each of those four centers from 2003 to present that have
23 inspections of passenger or light tire trucks made in 2003 at
24 Defendant's Tupelo plant? And then you can do a 30(b)(6) for
25 each one of those centers and if the head of the division can't

1 answer it, they can find somebody who can.

2 **MR. TAYLOR:** Yes, your Honor.

3 **MR. GSANGER:** Your Honor, this is John Gsanger on
4 behalf of the Idar family. Should I move on to Interrogatory
5 Number 4?

6 **THE COURT:** Okay.

7 **MR. GSANGER:** This one is actually a pretty simple
8 one. I'm not even sure I understand.

9 **THE COURT:** Well, let me just ask the objection to
10 this one.

11 **MR. GSANGER:** Okay.

12 **MR. TAYLOR:** Yes, your Honor, Raph Taylor for Cooper
13 Tire. In terms of Interrogatory Number 4, first off, frankly
14 we don't understand the terminology, what they mean by "tire
15 lines." There are --

16 **THE COURT:** Why don't you-all talk about that right
17 now and see if you can -- I don't mind you doing that instead
18 of just addressing me. If you could try to get that clear
19 between you, you may be able to work out something.

20 **MR. TAYLOR:** John -- Mr. Gsanger, are you talking --

21 **MR. GSANGER:** Well, Raph -- yeah, I can tell you --

22 **MR. TAYLOR:** -- about tire lines in terms of brand
23 names of tires?

24 **MR. GSANGER:** Yes.

25 **MR. TAYLOR:** Is that what you're getting at?

1 **MR. GSANGER:** Yes, I am.

2 **MR. TAYLOR:** Okay.

3 **MR. GSANGER:** Same way it normally is talked about at
4 the depositions, brand names.

5 **MR. TAYLOR:** Well, and it is different but anyway --
6 your Honor, Raph Taylor for Cooper Tire. Here's where the
7 objection lies. Cooper may make any number of different brand
8 of tire or put a stamping brand name on the side of a tire that
9 is made to a specific Green Tire Specification --

10 **THE COURT:** Okay.

11 **MR. TAYLOR:** -- or a blueprint for that tire and so
12 to simply, say, you know, list all tires made by Cooper at a
13 certain site during 2003 with the Cooper Trendsetter SE on the
14 side of it, that could encompass any different number of Green
15 Tire Specifications, any number of different brands that were
16 out there. It is a -- it's one of those and you look at and
17 you go, well, it seems pretty simple but at the same time what
18 it does is it's going to confuse everybody because we're
19 getting away from similar product and similar tires.

20 **MR. GSANGER:** Your Honor, this is John Gsanger on
21 behalf of the Plaintiffs. May I respond?

22 **THE COURT:** Yes.

23 **MR. GSANGER:** I mean, the question about whether it's
24 going to confuse anybody, that sounds to me like perhaps it
25 might be something to raise in motions in limine but that

1 certainly seems like an admissibility concern, not a
2 discoverability concern. I mean, I'm not confused nor do I
3 believe is Mr. Taylor confused by, you know, a question, tell
4 me the brand names that you made that were in a P21575R14 size
5 at any time during 2003. That's not -- it's not an opaque
6 question and then the other question is, just tell me the tires
7 you made that have the words "Cooper Trendsetter SE" stamped on
8 the sidewall from the tire period from 1993 to 2000.

9 The truth is, you know, this is information that if I
10 had a complete library of tire design tread guides, you know, I
11 could probably -- if I was -- you know, if I was Cooper -- if I
12 have access to Cooper's library, I could answer this question
13 in about 15 minutes at their library but I don't have access to
14 Cooper's library. This is just a pretty simple question that
15 says, what tires did you make that fit in either this category
16 under -- or under this brand name stamped on the sidewall. I
17 don't see how that confuses anybody and if it did confuse
18 somebody, you know, then that's something that could be
19 addressed at the admissibility stage.

20 **THE COURT:** How difficult is that to answer, again,
21 Mr. Taylor?

22 **MR. TAYLOR:** Your Honor, we can get that answer --

23 **THE COURT:** Okay.

24 **MR. TAYLOR:** -- probably within about a week or so.

25 **THE COURT:** All right, thank you. And then 5?

1 **MR. GSANGER:** Okay, 5, your Honor, says, for all
2 those tires that we identify in Interrogatory Number 4, you
3 know, please tell me what size they were made and during -- and
4 what time period they were made. It says, will you tell me
5 whether or not they had BEGS. "BEGS" is -- stands for -- it's
6 an acronym for belt edge gum strips. It's one of the safer
7 alternative designs that was not included in the tire issue but
8 which is included in some of Cooper's tires but frankly it's
9 not included in very many of Cooper's tires and so probably
10 their answer is going to be, you know, they'll -- out of all
11 the tires they identify, they might identify one or two that
12 had BEGS. More likely than not, they'll identify none that had
13 BEGS.

14 Three is which of these tires that you identified in
15 Interrogatory 4 had SNOW. Now, SNOW is another acronym. It
16 stands for spirally -- spiral -- spirally-wound nylon over wrap
17 and that stands for SNOW. And so of all those tires that were
18 identified, which ones had SNOW and their answer is likely
19 going to be none or if it is one or two of them, you know,
20 they'll just identify one or two that had SNOW.

21 And then finally, you know, tell me the last name
22 address or counsel's address and phone number -- let's say the
23 contact information -- for anybody who had a claim based on
24 personal injury or death or property damage alleging the tread
25 separation of one of these tires identified in Interrogatory

1 Number 4 and so basically what I'm trying to say is, you know,
2 identify those tires for me and then once you identify them for
3 me, tell me which ones had the very same sacral term designs
4 that we're talking about and tell me -- give me the property
5 damage and personal injury or death claims information in
6 relation to tread separations for those specific tires.

7 **THE COURT:** How big of a number are we talking about
8 here, Mr. Taylor?

9 **MR. TAYLOR:** Your Honor, it could be quite a few and
10 here's -- and I apologize for vagueness of that answer. Here's
11 my problem and I'm looking at Interrogatory Number 4 when we're
12 talking about the sides and --

13 **THE COURT:** You know what? Why don't we start with
14 answering Interrogatory Number 4 and then we'll follow up on
15 5 --

16 **MR. TAYLOR:** Yes, your Honor.

17 **THE COURT:** -- at another -- I'm going to put that
18 off to another time -- in two weeks' time. How's that?

19 **MR. GSANGER:** That sounds great, your Honor.

20 **MR. TAYLOR:** Yes, your Honor.

21 **THE COURT:** And then maybe you'll have something put
22 together that we can talk about.

23 **MR. TAYLOR:** It'd be easier.

24 **THE COURT:** Anything else?

25 **MR. GSANGER:** The only things that I could ask for in

1 addition, your Honor, is if we could have a deadline for
2 compliance with a request for production that we talked about.

3 **THE COURT:** Let me ask Mr. Taylor what he thinks is
4 reasonable for that. I mean, I -- you've already had several
5 months but on the other hand, you filed -- you did file
6 objections that were not brought to my attention until today.
7 So what do you think would be reasonable?

8 **MR. TAYLOR:** Your Honor, I was thinking that maybe 30
9 days would be reasonable to gather the documents and --

10 **THE COURT:** All right. You had said one week -- I'll
11 give you two weeks for Interrogatory Number 4 and 30 days for
12 the rest.

13 **MR. TAYLOR:** Okay, thank you, your Honor.

14 **MR. GSANGER:** Your Honor, the last thing I would say
15 is that 30 --

16 **THE COURT:** Okay, who is this?

17 **MR. GSANGER:** I'm sorry, your Honor. This is John
18 Gsanger.

19 **THE COURT:** Okay.

20 **MR. GSANGER:** I apologize. I was wondering if
21 perhaps at the same time if -- and I'll talk to Counsel about
22 this. Perhaps we may need to discuss putting back our expert
23 deadline if we're not going to get any discovery for 30 days
24 because that expert deadline is about six weeks away -- about
25 six weeks away now.

1 **THE COURT:** Well, the problem with the expert
2 deadline is that I'm not going to expend the Daubert challenge
3 time. So you-all need to talk about that and see what
4 agreement you can come up with.

5 **MR. GSANGER:** Okay, your Honor, we'll do so.

6 **THE COURT:** Thank you very much. You're excused.

7 **MR. GSANGER:** Thank you, Judge.

8 **THE COURT:** I'm sorry. Was somebody about to say
9 something?

10 **MR. TAYLOR:** Yes, your Honor. I'm sorry, Raph Taylor
11 for Cooper Tire. Just one last thing, I believe that we are
12 still not receiving authorizations for medical records from
13 Plaintiff's counsel. We've sent them to him a number of
14 different times saying we really need to have access to these
15 injured parties' medical records and need to be able to order
16 those --

17 **THE COURT:** What's the problem with this,
18 Mr. Gsanger?

19 **MR. GSANGER:** I have taken their requests and I have
20 forwarded them to my super competent and highly diligent
21 partner Angie Beltran and I understand that she has sent them
22 some replies but maybe they aren't liking the responses she's
23 gotten.

24 **THE COURT:** Well, you have to give them a list of
25 every -- as I told you, every healthcare provider for five

1 years before the incident, mental, physical, contact
2 information and generally what they were seen for.

3 **MR. GSANGER:** Yes, ma'am.

4 **THE COURT:** I mean, you don't have to remember every
5 cold, every antibiotic, every whatever through the date of
6 trial.

7 **MR. GSANGER:** I get that, your Honor.

8 **THE COURT:** Obviously the person is dead. So that's
9 going to end at the time of the incident but anybody else -- I
10 don't think anybody else has a mental anguish claim. Neither
11 of the parents, do they?

12 **MR. GSANGER:** No, I -- yes, Mrs. Idar does -- I mean,
13 she -- you know, she's a bystander even if she's --

14 **THE COURT:** I'm sorry. I forgot she was a bystander.
15 Mr. Idar was not a bystander.

16 **MR. GSANGER:** He was in person.

17 **THE COURT:** Yes. So hers as well.

18 **MR. GSANGER:** Absolutely.

19 **THE COURT:** Now, that was supposed to be done at the
20 Rule 26 conference.

21 **MR. GSANGER:** But it has been done.

22 **THE COURT:** I need -- you need to get a list to the
23 -- of those providers to the Defendant and then you need to get
24 authorizations for release. Now, I'm wondering if -- has there
25 been an estate probated or the Letters Testamentary from -- for

1 any of these people?

2 **MR. GSANGER:** No, because it was a minor child who
3 was deceased and because the only two heirs at law would be the
4 two parents because, of course, a ten-year-old child doesn't
5 have any assets or any debts or is not married and doesn't have
6 any children. The only two heirs at law would be the two
7 parents and they apparently --

8 **THE COURT:** So did the -- in the -- was there a
9 divorce between the Idars?

10 **MR. GSANGER:** That either has happened very, very
11 recently or is happening very, very soon. Mr. Idar has only
12 recently been released from prison and now that he's been
13 released from prison, the divorce proceeding is in the works.

14 **THE COURT:** Okay. So at the time of the death, both
15 parents had equal rights, I'm assuming, to do medical -- to get
16 medical care for the child?

17 **MR. GSANGER:** True, correct.

18 **THE COURT:** So then the mother ought to be able to
19 sign a release?

20 **MR. GSANGER:** Yeah, unquestionably. The parents are
21 not in disagreement that the mother should act with full
22 authority as representative of the estate and as next friend
23 for the kids. There's no dispute in that.

24 **THE COURT:** Well, the father wants to intervene.

25 **MR. GSANGER:** Well, he wants to intervene on his own

1 behalf because he is the wrongful death beneficiary.

2 **THE COURT:** Right. Well, I'm going to grant the
3 intervention if I have not already.

4 **MR. BALL:** Your Honor, this is Wesley Ball. I do not
5 believe I've seen the order granting the intervention but we
6 have signed -- we have --

7 **THE COURT:** Well, you know, I need to do that but
8 you-all need to get in the next three days authorizations to
9 all health and mental healthcare providers for the mother and
10 for the decedent.

11 **MR. GSANGER:** Will do.

12 **THE COURT:** I mean, that is well, well overdue.

13 **MR. GSANGER:** Will do. And I do believe that we -- I
14 mean, I know that we've given them a list of providers --

15 **THE COURT:** Well, let's just --

16 **MR. GSANGER:** -- and summary of what every provider
17 provided and I thought we had given some releases. If we have
18 not, I will make sure that we do but I was fairly sure that we
19 had given some releases. This is the first I've heard of it.

20 **THE COURT:** Any other discovery problems?

21 **MR. TAYLOR:** Raph Taylor for Cooper Tire, your Honor,
22 none that I'm aware of.

23 **MR. GSANGER:** Well, the only -- I mean, we're
24 probably meeting shortly about a request to see the tire-
25 building machine and perhaps a visit to the document repository

1 in Ohio.

2 **THE COURT:** Okay. Didn't you -- that's Mr. Gsanger
3 talking. Mr. Taylor, did you say that you'd not been allowed
4 access to the alleged defective tire?

5 **MR. TAYLOR:** We have now, your Honor. I'm sorry.
6 When we were there back in 2010, we had not had an opportunity
7 to even see it. We have now seen it. Thank you, your Honor.

8 **THE COURT:** Okay, all right. Thank you very much.

9 **MR. GSANGER:** And I'm more than happy to make it
10 available on multiple occasions.

11 **THE COURT:** Okay, thank you-all very much. You're
12 excused.

13 **MR. GSANGER:** Thank you, Judge.

14 **MR. TAYLOR:** Thank you, your Honor.

15 **(This proceeding was adjourned at 4:06 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", positioned above a horizontal line.

March 3, 2011

TONI HUDSON, TRANSCRIBER